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WM. R. STANSBURY

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

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FIRST NATIONAL BANK IN ST.
LOUIS,
Plaintiff in Error
(and Petitioner in Certiorari),

vs.

STATE OF MISSOURI, Upon Informa-
tion of JESSE W. BARRETT,
Attorney-General,
Defendant in Error
(and Respondent in Certiorari).

No. 252.

**PETITION FOR MODIFICATION OF ORDER
ON REARGUMENT.**

FRANK B. KELLOGG,
JAMES C. JONES,
FRANK H. SULLIVAN,
Counsel for Plaintiff in Error.



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Defendant in Error
(and Respondent in Certiorari).

No. 252.

NOTICE.

The defendant in error will take notice that on Monday, October 15th, 1923, on the opening of the court, the plaintiff in error will ask leave to file a motion to modify the argument for reargument, a copy of which is hereto attached.

FRANK B. KELLOGG,
JAMES C. JONES,
FRANK H. SULLIVAN,
Counsel for Plaintiff in Error.

Service of the foregoing notice, with copy of petition for modification of order for reargument, is hereby acknowledged this. ~~7~~¹⁴ day of October, 1923.

JESSE W. BARRETT,
Attorney-General of the State of
Missouri.

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And now comes First National Bank in St. Louis, plaintiff in error (and petitioner in certiorari), and respectfully shows to the Court that the questions arising upon the record of this cause are these:

1. The inherent power of a state to maintain proceedings to question compliance by a national bank with its charter.
2. The validity of a state statute limiting or

prescribing the corporate powers of a national bank.

3. The power of a national bank, under the Act of Congress, to maintain branch offices in the city, town or village in which it does business.

At the last term this order was entered by the Court in this cause:

“It is ordered that this case be restored to the docket for reargument at the next term on the issue whether the state had authority to institute and maintain a proceeding to question compliance by a national bank with its charter.”

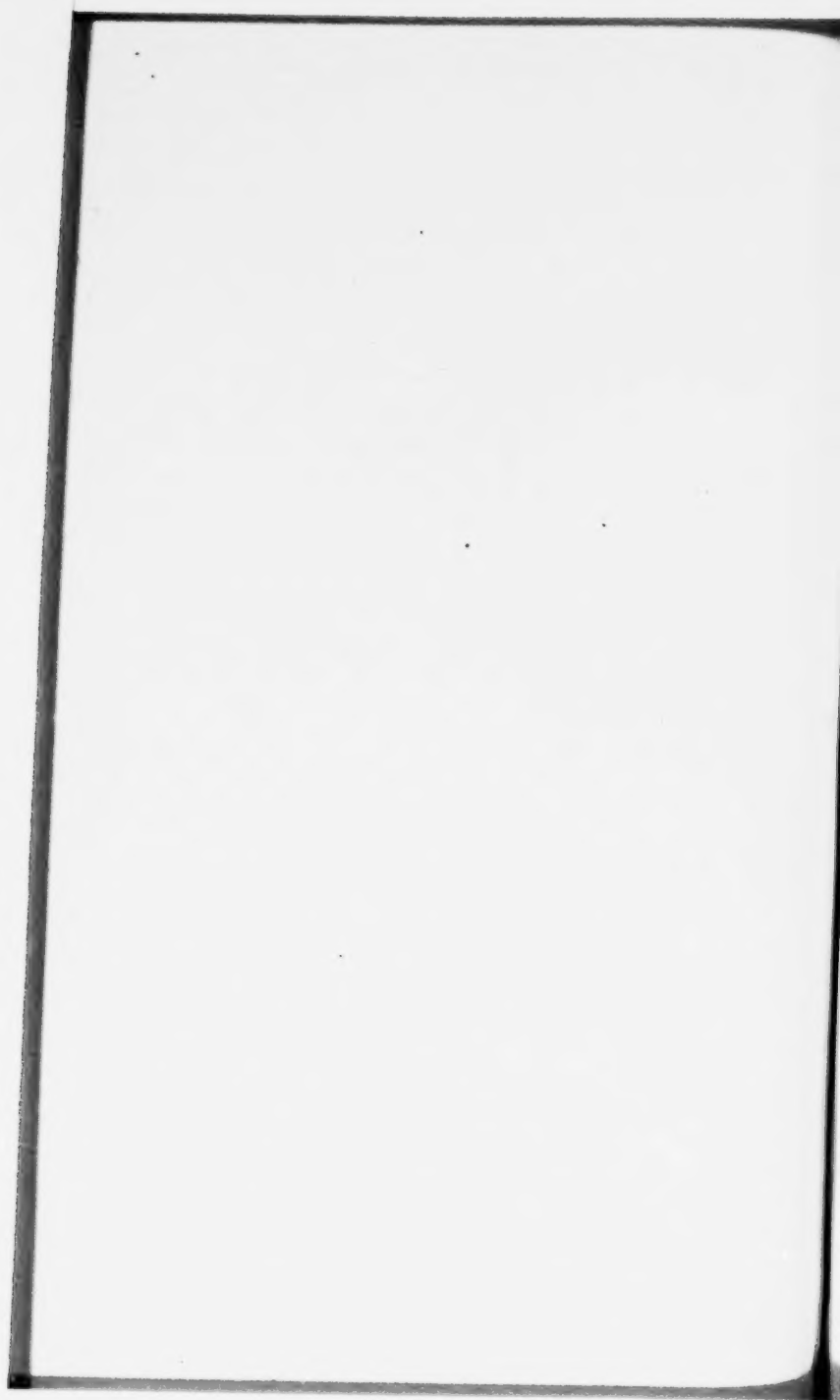
The question as to the proper powers of a national bank in the respect here involved is an important consideration, affecting national banks throughout the Union, and of great concern not only to the banks themselves, but to the business interests of the country.

The Attorney-General of the United States has since the prior argument rendered an opinion to the Honorable Secretary of the Treasury, affirming the power here in question. A copy of this opinion is appended hereto. This fact is of significance in view of the insistence of the defendant in error upon the alleged adverse departmental construction of the National Bank Act, at the prior argument, and in the briefs filed.

It is respectfully submitted by the plaintiff in error that the importance of the questions arising upon the record justifies a reargument of the entire case.

Wherefore, the plaintiff in error prays that the order for reargument be modified so as to permit of argument of the entire case.

FRANK B. KELLOGG,
JAMES C. JONES,
FRANK H. SULLIVAN,
Counsel for Plaintiff in Error.



DEPARTMENT OF JUSTICE.

Washington.

October 3, 1923.

Sir:—

I have your letter of August 30, 1923, requesting my opinion on the power of national banking associations to open and operate offices at places other than their banking houses for the performance of such routine services as the receipt of deposits and cashing of checks for their customers. You request to be advised whether:

(1) Assuming that a national banking association is without power to establish and maintain a branch bank for carrying on a general banking business, has it the corporate power to open and operate an office or offices at a place or places other than its banking house, for the performance of such routine services as the collection of deposits and cashing of checks for its customers?

(2) If a national banking association has the corporate power to open and operate such an office or offices, must they be located within the city limits of the place designated in the organization certificate of the association as the place where its operations of discount and deposit would be carried on?

The statutes relating to national banking associations, so far as they are material to our present inquiry, are Sections 5133, 5134 (Par. 2), 5136 (Pars.

6 and 7), and 5190, R. S. The material parts of said statutes read as follows:

“Sec. 5133. Associations for carrying on the business of banking under this title may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.”

“Sec. 5134. The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

* * * * *

“Second. The place where its operation of discount and deposit are to be carried on, designating the state, territory or district, and the particular county and city, town or village.”

“Sec. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

* * * * *

“Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which the stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred,

its general business conducted, and the privileges granted to it by law exercised and enjoyed.

“Seventh. To exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange and other evidence of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security, and by obtaining, issuing and circulating notes, according to the provisions of this title.”

“Sec. 5190. The usual business of such national banking associations shall be transacted at an office or banking house located in the place specified in its organization certificate.”

The provisions of Section 5190, R. S., as to the place at which the usual business of the bank shall be transacted refers to the city or town in which the bank is located and not the particular place within the city (*McCormick v. Market Nat'l Bank*, 165 U. S. 538, 549).

National banks have only those powers specified in the National Banking Acts and such other powers as are necessarily incidental thereto (*McBoyle v. Union Nat'l Bank*, 122 Pa. 458; *First Nat'l Bank v. Nat'l Exchange Bank*, 92 U. S. 122, 127; *Logan Co. Nat'l Bank v. Townsend*, 139 U. S. 67, 73; *Bullard v. Bank*, 18 Wall. 589, 593).

In *Bullard v. Bank*, *supra*, the Supreme Court said:

“The extent of the powers of national banking associations is to be measured by the act of Congress under which such associations are organized.”

In *Logan Co. Nat'l Bank v. Townsend*, supra, the Court said:

"It is undoubtedly true, as contended by the defendant, that the National Banking Act is an enabling act for all associations organized under it, and that a national bank cannot rightfully exercise any powers except those expressly granted by that act, or such incidental powers as are necessary to carry on the business of banking for which it was established."

It is to be observed that Section 5190, R. S., relates to the "usual business" which, in my opinion, is to be construed the general banking business usually conducted by national banks. There is no statutory requirement that all the business of a national bank shall be transacted at the general office or banking house of the association.

In my opinion, a national banking association may establish in the city or place designated in its certificate of organization an office or offices for the transaction of business of a routine character, which does not require the exercise of discretion, and which may be legally transacted by the bank itself. It may not, however, establish a branch bank to do a general banking business such as is usually done by national banks. The establishment of such a branch would be illegal and subject the offending bank to the forfeiture of its charter (29 Op. 81).

It seems to be the intent of the National Banking Act that the business of banking ordinarily transacted by a national banking association shall be performed in the city or place designated in its organization certificate.

It has been held that a national bank cannot make a valid contract for the cashing of checks upon it, at a different place from that of its residence, through the agency of another bank (*Armstrong v. Second Nat'l Bank*, 38 Fed. 883, 886).

While national banking associations may exercise all the powers expressly given them by the statute, and such additional powers as may be necessary to carry on the business of banking, the manner in which the powers may be exercised is subject to the supervision of the Comptroller of the Currency. Should the Comptroller, in the exercise of his supervisory powers over national banks, ascertain that the directors or officers have knowingly violated, or are violating, the national banking laws, he may proceed against such association, its officers and directors as provided by Section 5239, R. S., which reads as follows:

"If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents or servants of the association to violate, any of the provisions of this title, all the rights, privileges and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

Answering your specific questions I have the honor to advise you as follows:

First. National banking associations have the power to open and operate offices at places other than their banking houses, within the place specified in their organization certificate, for the performance of such routine services as the receipt of deposits and the cashing of checks for their customers.

Second. National banking associations have no authority to open offices for the purpose of receiving deposits, paying checks, etc., outside of the limits of the city or place designated in the organization certificate as the place of its operations of discount and deposit.

Respectfully,

H. M. Daugherty,
Attorney-General.

The Honorable,
The Secretary of the Treasury.